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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,966	08/17/2001	Brian W. Adkins	114300.2200	1822
30734	7590	12/24/2003	EXAMINER	
BAKER + HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304				JACKSON, ANDRE K
ART UNIT		PAPER NUMBER		
		2856		
DATE MAILED: 12/24/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/930,966	ADKINS ET AL.	

Examiner	Art Unit
André K. Jackson	2856

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:

- (a) they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) they raise the issue of new matter (see Note below);
- (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. The drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. Other: _____.

Continuation of 5. does NOT place the application in condition for allowance because: Given the challenges presented by the Applicants to provide a "reference or elaboration" to support the rejection of claims 2-9,12-18 and 20-26. The Examiner has provided a few references. First Bramhall, Jr. (US4948074) describes, in column 1, some reasons why gauges are mounted flush i.e. protruding portion can cause injuries (Office Action dated 07/28/03 page 3) and the gauges are aesthetically pleasing. The Prior art disclosed by the Applicants shows a flush mounted control that includes the liquid level indicator that is mounted flush to the apparatus. Another reference that shows this flush mounting is Hugh (US6117687). Applicants argue the placement of the scale on the gauge. McGrath et al. (US2533490) and Bertani (Des 335829) disclose the need to place markings/indicia on the gauge. Bertani shows minimum and maximum markings. McGrath et al. has markings at various heights, which indicates the level of the liquid. .



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DETAILED ACTION

Claim Objections

1. Claims 20,22 and 25 are objected to because of the following informalities:

Regarding claim 20, "gage" should be --gauge-- since the previous claims have the word spelled as --gauge--.

Regarding claim 22, "packet" should be --jacket--.

Regarding claim 25, "the" should be --The--.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4,5,8,12-15,17 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard.

Regarding claim 4, Howard discloses an incubator that has a mechanical liquid level gauge (9), which is basically a sight glass level gauge. A scale disposed on the liquid level gauge is not disclosed. However, one of ordinary

skill in the art would have been inclined to place a scale onto the gauge to have an accurate measurement of liquid present in the incubator. Most sight gauges have a scale or some sort of readable markings placed on the gauge to show the exact level readings. Howard does not disclose a gauge mounted flush with a face of the incubator. However, to orient the gauge flush with a face of the incubator in Howard would have been obvious to the skilled artisan at the time of the invention. Orienting the gauge flush on the face would provide needed information at a close proximity and keep the gauge from being broken and free from protrusions.

Regarding claim 5, Howard discloses an incubator that has a liquid level gauge (9) that is tubular (Figure 1).

Regarding claim 8, Howard discloses an incubator that does have a liquid level gauge that is visible when the incubator is closed (Figure 1).

Regarding claim 12, Howard discloses an incubator that has a monitoring means that is mechanical (9).

Regarding claim 13, Howard discloses an incubator, which has a means for measuring a liquid level of the incubator (9).

Regarding claim 14, Howard discloses a mechanical means for monitoring a level of fluid (Figure 1), a means for mounting the fluid level monitoring device flush into a front face of an incubator and a means for adjusting fluid level (10). Howard does not disclose a fluid level monitoring device mounted flush with the face of the incubator. However, to orient the fluid level-monitoring device flush

with the front face of the incubator in would have been obvious to the skilled artisan at the time of the invention. Orienting the scale on the front face would provide needed information at a close proximity.

Regarding claim 15, Howard does not disclose a scale mounted flush with the front face of the incubator. However, to orient the scale flush with the front face of the incubator would have been obvious to the skilled artisan at the time of the invention. Orienting the scale on the front face would provide needed information at a close proximity.

Regarding claim 17, Howard discloses an incubator that has a visible sight window (Figure 1). The sight window can be seen from the front face of the incubator as shown in Figure 1.

Regarding claim 20, Howard discloses visibly measuring a minimum liquid level of the incubator, an incubator that has a mechanical fluid level indicator (9, sight glass) that is visibly monitored by visibly measuring a maximum liquid level of the incubator and adjusting the level in the incubator (Figure 1). In the Howard reference a low liquid level and a maximum liquid level can be seen by simply observing the position of the liquid within the sight glass.

Regarding claim 21, Howard does not disclose a scale disposed on the front face of the incubator. However, to orient the scale on a front face of the incubator would have been obvious to the skilled artisan at the time of the invention. Orienting the scale on the front face would provide needed information at a close proximity.

Regarding claim 22, Howard does not disclose an incubator that does not provide a scale full and fill markings. However, one of ordinary skill in the art would have been inclined to place scale markings on the gauge to determine the precise amount of liquid remaining within the water jacket.

Regarding claim 23, Howard discloses adjusting the level in the incubator (Figure 1).

4. Claims 2,3,6,7,9,16,18 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard in view of the admitted Prior Art.

Regarding claim 2, Howard does not show a liquid level gauge disposed on the front face of the incubator. However, the admitted Prior Art discloses a liquid level gauge that is mounted on the front face of the incubator (Figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Howard to include a level gauge mounted on the front face of the incubator as taught by the admitted Prior Art. By adding this feature the artisan would be able to view the level of the liquid without manipulating the position of the incubator.

Regarding claim 3, neither the admitted Prior Art nor Howard discloses a scale disposed on the front face of the incubator. However, to orient the scale on a front face of the incubator in combination of Howard and the admitted Prior Art would have been obvious to the skilled artisan at the time of the invention. Orienting the scale on the front face would provide needed information at a close proximity.

Regarding claim 6, Howard does not disclose a liquid level gauge connected to the water jacket. However, the admitted Prior Art (Figure 1) discloses an incubator that does have a liquid level gauge connected to the water jacket. Therefore, it would have been well within the purview of the skilled artisan to modify Howard to include a water jacket as taught by the admitted Prior Art. By adding this water jacket to Howard the jacket would not be exposed as the water coil is with the Howard reference. The water coil within the Howard reference performs the same function as the claimed water jacket, which is to provide uniform heating within the chamber.

Regarding claim 7, neither Howard nor the admitted Prior Art disclose an incubator that provides a scale with full and fill markings. However, one of ordinary skill in the art would have been inclined to place scale markings on the gauge of Howard to determine the precise amount of liquid remaining within the water jacket. Most sight gauges have a scale or some sort of readable markings placed on the gauge to show the exact level readings.

Regarding claim 9, the orientation of the feed tube is considered to be an obvious design choice within the purview of one of ordinary skill in the art. Note Prior Art Figure 2 shows a feed tube (21) disposed in the water jacket.

Regarding claim 16, Howard does not disclose an incubator that does have a fill hole and a drain lock. However, the admitted Prior Art (Figure 1) discloses an incubator that does have a fill hole (15) and a drain lock (13). Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention to modify Howard to include an incubator that does have a fill hole and a drain lock as taught by the admitted Prior Art. By adding this feature it would enable the user to fill the incubator to a specific level.

Regarding claim 18, Howard discloses a minimum level indicator. Howard does not disclose an incubator that has a monitoring means that includes a maximum liquid level indicator. However, one of ordinary skill in the art would have been inclined to place maximum liquid level indicator to determine how much liquid has been placed in the water jacket so there will not be an over fill situation.

Regarding claim 24, Howard does not disclose a water jacket incubator. However, the admitted Prior Art (Figure 1) discloses an incubator that is a water jacket. Therefore, it would have been well within the purview of the skilled artisan to modify Howard to include a water jacket as taught by the admitted Prior Art. By adding this water jacket to Howard the jacket would not be exposed as the water coil is with the Howard reference. The water coil within the Howard reference performs the same function as the claimed water jacket, which is to provide even heating within the chamber.

Regarding claim 25, Howard does not disclose a water jacket incubator. However, the admitted Prior Art (Figure 1) discloses an incubator that is a water jacket. Therefore, it would have been well within the purview of the skilled artisan to modify Howard to include a water jacket as taught by the admitted Prior Art. By adding this water jacket to Howard the jacket would not be exposed as

the water coil is with the Howard reference. The water coil within the Howard reference performs the same function as the claimed water jacket, which is to provide even heating within the chamber.

Regarding claim 26, Howard does not disclose a water jacket incubator. However, the admitted Prior Art (Figure 1) discloses an incubator that is a water jacket. Therefore, it would have been well within the purview of the skilled artisan to modify Howard to include a water jacket as taught by the admitted Prior Art. By adding this water jacket to Howard the jacket would not be exposed as the water coil is with the Howard reference. The water coil within the Howard reference performs the same function as the claimed water jacket, which is to provide even heating within the chamber.

Response to Arguments

5. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

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A.J.

July 24, 2003



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